

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010120902

ORDER ON MOTION FOR
CLARIFICATION

On December 27, 2010 Student's father (Father) on behalf of student (Student) filed a Due Process Hearing Request (Complaint) naming Newport-Mesa Unified School District (District). On January 6, 2011, District filed a Notice of Insufficiency (NOI) and Motion to Dismiss the Complaint. On January 10, 2011, Student filed an opposition to the Motion to Dismiss. On January 12, 2011, the Office of Administrative Hearings (OAH) denied the NOI, but granted District's motion to dismiss in part and issued an order dismissing Student's claims for violation of section 504 of the Rehabilitation Act of 1973 (Section 504) for lack of jurisdiction (January 12, 2011 order). On January 24, 2011, District filed a Motion for clarification of the order. Specifically, District seeks clarification of whether Student's proposed resolution number 10 seeking attorneys fees arising from a family law proceeding in which District also is alleged to have participated was dismissed by the order. Father did not file any response to District's Motion for Clarification.

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc., OAH will not dismiss IDEA claims that have otherwise been properly pled.

The Section 504 claim and the proposed resolution to it was dismissed by the January 12, 2011 order. However, proposed resolution number 10 was presented as a remedy for both the Section 504 Claim and for the alleged violations of father's procedural rights under the IDEA. To dismiss resolution number 10 at this juncture would require OAH to hear and determine the equivalent of a judgment on the pleadings with respect to Fathers' claim for procedural violations of the IDEA and impediment of his right to participate in the IEP process, without giving him the opportunity to develop a factual record at hearing. Given the minimum pleading standards under the IDEA, and the lack of any administrative procedure

comparable to a judgment on the pleadings, dismissal based on an application of the law to the facts alleged in the complaint is unwarranted. To the extent District contends that reimbursement of legal fees for family law proceedings is not available as a remedy for IDEA violations, its argument should be made after the hearing, based on the facts developed there.

ORDER

1. Student's claim for violation of Section 504 of the Rehabilitation Act of 1973 is dismissed for lack of jurisdiction. The hearing shall proceed on all other claims and proposed resolutions alleged in the complaint.

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: February 8, 2011

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings